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No. 736
JOINT APPENDIX

IN THE

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13651

TRUCK DRIVERS AND HELPERS LOCAL UNION 728 (formerly Local Union 859) OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition to Review and Set Aside and on Petition for Enforcement of an Order of the National Labor Relations Board

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Decision and Order

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS, LOCAL UNION 859, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL and ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., GEORGIA BRANCH	Case No. 10-CC-79

Upon a charge duly filed on June 28, 1954, by Associated General Contractors of America, Inc., Georgia Branch, the General Counsel of the National Labor Relations Board, herein called the General Counsel, by the Regional Director of the Tenth Region, issued a complaint dated July 28, 1954, against Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, hereinafter referred to as Respondent, alleging that it has violated Section 8(b)(4)(A) of the National Labor Relations Act, as amended, by inducing and encouraging employees of various employers to engage in

strikes or concerted refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service, with an object of forcing such employers to cease doing business with Campbell Coal Company, hereinafter referred to as Campbell. Copies of the complaint and Notice of Hearing were duly served on the Respondent on or about July 28, 1954. On August 6, 1954, the Respondent filed its answer to the complaint.

Thereafter on September 9, 1954, the parties entered into a stipulation setting forth an agreed statement of facts. The stipulation provided that the parties thereby waive their rights to a hearing, to the taking of testimony before a Trial Examiner of the Board, to issuance of an Intermediate Report and to the filing of exceptions. The Stipulation further provided that, upon such stipulation, the charge, Affidavit of Service of the charge, complaint, Notice of Hearing, Affidavit of Service of the complaint and Notice of Hearing and the Respondent's answer, the Board may make findings of fact, and conclusions of law, and may issue a Decision and Order as if the same facts had been adduced in open hearing before a duly authorized Trial Examiner of the Board.

The aforesaid Stipulation is hereby approved and accepted and made a part of the record in this case. In accordance with Section 102.45 of the National Labor Relations Board Rules and Regulations this proceeding is duly transferred to, and continued before, the Board.

Upon the basis of the aforesaid Stipulation and the entire record in the case, the Board, having duly considered the briefs filed by the parties, makes the following:

Findings of Fact

I. The Business of the Employer

Campbell Coal Company is a Georgia corporation with its principal office and places of business in that state. It is engaged in the wholesaling and retailing of building materials, including ready-mixed concrete. During the past year Campbell purchased, and caused to be shipped to its establishments at Atlanta, Ga., directly from points outside of the State of Georgia, materials valued in excess of $1,000,000. During the same period, Campbell sold and shipped directly to points outside the State of Georgia materials valued in excess of $50,000.

We find that Campbell Coal Company is engaged in commerce within the meaning of Section (2) (6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. The Respondent Labor Organization

Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, is a labor organization within the meaning of Section 2(5) of the Act.

III. Unfair Labor Practices

Campbell operates two ready-mix concrete plants in the Atlanta, Ga., area where it employs, among others, truck drivers who drive the trucks by which Campbell delivers its ready-mix to various construction sites in that area. These

truck drivers enter and leave the ready-mix plants several times during the course of each working day. At the delivery points for the ready-mix, the truck drivers, at the direction of the contractors on the job sites, operate the unloading mechanisms of the truck so as to place the ready-mix at places and in receptacles designated and provided by the contractors. A frequent method of unloading is to pour the mixture into forms so placed that the mixture, when dry, becomes a part of the structure of the project. The drivers spend approximately 25 per cent of their working time at the plant, 25 per cent en route and approximately 50 per cent at the construction sites.

From on or about June 9, 1954, until at least September 8, the date of the Stipulation, the Respondent has been on strike against Campbell because of the discharge of a number of Campbell's ready-mix truck drivers. The Respondent has continuously, at all times material, picketed Campbell's two ready-mix plants. In addition, the Respondent's pickets have followed some of Campbell's trucks from the ready-mix plants to various construction projects in the area where Campbell's trucks make deliveries, although the Respondent has no dispute with any of the contractors on such projects. The pickets carried signs which read:

> Employees of Campbell Coal Company on strike in protest of discharges against Union employees. Sales Drivers, Helpers and Building Construction Drivers, Local 859, AFL.

The picketing continued only so long as Campbell's trucks remained on the construction sites and was confined to the immediate area of the truck, or as close as the pickets could get without trespassing on private property. Except by displaying the picket signs, the Respondent's pickets did not communicate with any of the employees working at the construction projects.

The essential allegation of the complaint is that by picketing the construction projects, the Respondent induced employees of the neutral employers on the projects to cease work as a means of compelling such neutral employers to discontinue their business with Campbell, the primary Employer.

The Respondent defends its picketing of the construction projects on the ground that such picketing allegedly falls within the area of permissible conduct recognized by the Board in *Moore Dry Dock Company,* 92 NLRB 547 and *Stover Steel Service,* 108 NLRB No. 221. We find no merit in the Respondent's argument. Upon consideration of all relevant facts in the case, and for the reasons stated in *Washington Coca-Cola,* 107 NLRB No. 104, affirmed in *Thurston Motor Lines, Inc.,* 110 NLRB No. 122, we find that Respondent's picketing of the construction projects was conducted to force secondary employers located on such projects to cease doing business with Campbell, by inducing and encouraging the employees of said employers to engage in a strike in violation of Section 8(b)(4)(A) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in Section III above, occurring in connection with the operations of Campbell Coal Company have a close, intimate and substantial relation to trade, traffic and commerce aong the several states and tend to burden and obstruct commerce and the free flow thereof.

V. The Remedy

Having found that the Respondent has violated Section 8(b)(4)(A) of the Act, we shall order it to cease and desist

therefrom and take certain affirmative action which is necessary to effectuate the policies of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, is a labor organization within the meaning of Section 2(5) of the Act.

2. By engaging in picketing with an object thereof to force or require George A. Fuller Construction Company, Southeastern Construction Company, The Flagler Company, Inc., Barge-Thompson Company, Ira H. Hardin Company, Wesley & Company, Inc., and Thompson and Street Company to cease doing business with Campbell Coal Company, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(A) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Order

Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, AFL, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Inducing or encouraging employees of George A. Fuller Construction Company, Southeastern Construction Company, The Flagler Company, Inc., Barge-Thompson Company, Ira H. Hardin Company, Wesley & Company, Inc., and Thompson and Street Company, or of any other employer to engage in a strike or concerted refusal in the course of their employment to perform services for their employers where an object thereof is to force or require said employers to cease doing business with Campbell Coal Company.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at the business offices of Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, in Atlanta, Ga., copies of the notice attached hereto as Appendix A.[1] Copies of said notice, to be furnished by the Regional Director for the Tenth Region, after being duly signed by official representatives of the Respondent shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members of Local Union 859 are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material. The Respondent shall also

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[1] In the event that this Order is enforced by a Decree of the United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the united States Court of Appeals, Enforcing an Order."

sign copies of the notice which the Regional Director shall submit for posting, the employers willing, at the Atlanta, Ga., premises of the employers listed in Appendix B.

(b) Notify the Regional Director for the Tenth Region, in writing within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., December 30, 1954.

GUY FARMER, *Chairman,*
ABE MURDOCK, *Member,*
PHILIP RAY RODGERS, *Member,*
NATIONAL LABOR RELATIONS BOARD.

(SEAL)

APPENDIX A

NOTICE

To all members of Sales Drivers, Helpers & Building Construction Drivers, Local 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and to all employees of Campbell Coal Company, pursuant to

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

We will not induce or encourage the employees of George A. Fuller Construction Company, Southeastern Construction Company, The Flagler Company, Inc., Barge-Thompson Company, Ira H. Hardin Company, Wesley & Company, Inc., and Thompson and Street Company, or any other employer, to engage in a strike or concerted refusal in the course of their employment to perform any services for their respective employer, where an object thereof is to force or require said Employers to cease doing business with Campbell Coal Company.

SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS, LOCAL UNION 859, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL.

Dated..... By.....
(Represenative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

George A. Fuller Construction Company
Southeastern Construction Company
The Flagler Company, Inc.
Barge-Thompson Company
Ira H. Hardin Company
Wesley & Company, Inc.
Thompson and Street Company

Stipulation

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

In the Matter of SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS, LOCAL UNION 859, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL and ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., GEORGIA BRANCH	Case No. 10-CC-79

It is hereby stipulated and agreed by and between Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL (herein called the Respondent), by and through its attorney, Edwin M. Pearce; Associated General Contractors of America, Inc., Georgia Branch (herein called A.G.C.), by and through its Executive Secretary, Robert H. Strickland; and Frank E. Hamilton, Jr., Counsel for the General Counsel of the National Labor Relations Board, that:

1.

Upon a charge filed by A.G.C. on the 28th day of June, 1954, and served on the Respondent on the 29th day of

June, 1954, receipt of which charge is hereby acknowledged by the Respondent, the General Counsel for the National Labor Relations Board on behalf of the National Labor Relations Board, herein called the Board, by the Regional Director for the Tenth Region, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 61 Stat. 136, herein called the Act, and pursuant to Section 102.15 of the Board's Rules and Regulations, issued a complaint and notice of hearing thereon, dated July 28, 1954, against the Respondent. True copies of the aforesaid charge, complaint and notice of hearing thereon were duly served by registered mail upon the Respondent and A.G.C.

2.

The Respondent, in its answer to the complaint herein and by this stipulation, admits the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the aforesaid complaint.

3.

The Respondent concedes the jurisdiction of the Board over the subject matter of this case.

4.

Since on or about June 9, 1954, the Respondent has been on strike against Campbell Coal Company (herein called Campbell) and has continuously, at all times material herein, picketed Campbell's two ready-mix establishments in the Atlanta area. Such strike was called by the Respondent because of the discharge of a number of Campbell's ready-mix truck drivers. The Respondent contends that these drivers were discharged because of their membership in, and activity on behalf of, the Respondent.

5.

Campbell's truck drivers who operate the trucks by which Campbell delivers ready-mix to various contractors, enter and leave Campbell's ready-mix plants a number of times each working day. At the delivery point for the ready-mix the truck drivers, at the direction of the contractor on the job site, operate the unloading mechanisms of the ready-mix truck so as to place the ready-mix at points and in receptacles designated and provided by such contractor. A frequent method of unloading is to pour the mixture into forms which are so placed that when the mixture sets up the concrete becomes a part of the structure or project. The drivers spend approximately 25 per cent of their working time at the plant, approximately 25 per cent of their working time en route to and from the plant and approximately 50 per cent of their working time at the construction site.

6.

Since on or about June 9, 1954, when the Respondent struck Campbell's two ready-mix plants, some of Campbell's trucks have been followed by the Respondent's pickets from the struck ready-mix plants to various construction projects in the Atlanta area where Campbell's drivers were to make delivery of ready-mix to a Campbell customer. At the construction project the Respondent's picket would advise the contractor, or its representative, of the labor dispute with Campbell, and ask the contractor or his representative not to accept the ready-mix from Campbell. In many instances the delivery was then refused, and in those cases the Respondent took no further action. In instances where the contractor elected to accept delivery of ready-mix from Campbell, the Respondent picket that contractor's building project with banners reading:

"Employees of Campbell Coal Company on strike in protest of discharges against Union employees. Sales Drivers, Helpers and Building Construction Drivers, Local 859, AFL."

7.

The aforementioned picketing continued only so long as Campbell's trucks remained on the construction site, and was confined to the immediate area of the trucks, or as close thereto as the picket could get without trespassing on private property.

8.

In some instances some employees working on projects at which such picketing occurred, quit work for the duration of the picketing. The reason assigned by such employees for their refusal to work was the presence of the Respondent's picket sign. The Respondent's pickets did not inform the employees who quit work as aforesaid, or other employees working on the picketed projects, that such picketing was not intended as an appeal to them not to work, nor otherwise inform such employees that they were free to resume work while the picketing was in progress. Other than displaying the picket sign, the Respondent's pickets did not speak to or otherwise communicate with any of the employees working at the construction projects. Except by the display of picket signs, as herein described, the General Counsel does not contend that the Respondent, through its pickets, officers, or otherwise, in any manner threatened, coerced or intimidated employees to quit work, or that any other form of inducement or encouragement of employees, whether by way of union by-laws or rules (written or unwritten), threats, promises, or otherwise, existed.

9.

The contractors at whose construction projects the Respondent picketed as set out in Paragraphs 6, 7 and 8 above, and Paragraph 7 of the complaint herein, are those named in Paragraphs 3, 7 and 8 of the complaint herein.

10.

Because of a current general strike in the Atlanta area against employers in the building and construction industry, work on virtually all building projects in the area has halted. The strike referred to is general in the building trades and has no relation to the matters involved in this proceeding. Because of such work stoppage, the contractors are not ordering and Campbell is not presently delivering ready-mix to such construction projects. However, the Respondent contends that its conduct in picketing at the construction sites of Campbell's customers in the manner herein described, is in all respects legal and proper, and it contends that it has the right, should it so desire, to picket at the job site of any Campbell customer, in the same manner that the picketing was formerly conducted, when the strike in the construction industry is concluded and Campbell resumes making deliveries to such customers. The General Counsel contends that such picketing is violative of Section 8(b)(4)(A) of the Act, and the Respondent contends that it is not.

11.

This stipulation, together with the charge, affidavit of service of the charge, complaint, notice of hearing thereon, affidavit of service of complaint and notice of hearing thereon, and the Respondent's answer, shall constitute the entire record herein and shall be filed with the Board.

12.

The parties hereto expressly waive hearing, intermediate report of trial examiner, the filing of exceptions and oral argument before the Board, and all briefs in this matter will be submitted to the Board thirty (30) days from the date hereof.

13.

This stipulation is subject to the approval of the National Labor Relations Board. Upon the Board's approval of this stipulation and on receipt of the briefs provided for hereinabove, the Board may decide the case, make findings of fact and conclusions of law and issue an appropriate order as though after hearing, intermediate report, exceptions and oral argument before the Board.

14.

This stipulation contains the entire agreement of the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters or adds to the stipulation.

IN WITNESS WHEREOF the undersigned hereunto set our hands on the dates and at the places written opposite our respective names.

SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS, LOCAL UNION 859, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL.

By EDWIN M. PEARCE,
Attorney.

Dated Aug. 31, 1954,
at Atlanta, Ga.

ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., GEORGIA BRANCH.

Dated Sept. 8, 1954, at Atlanta, Ga.

By ROBERT M. STRICKLAND,
Executive Secretary.

Dated Sept. 3, 1954, at Atlanta, Ga.

FRANK E. HAMILTON, JR.,
Counsel for the General Counsel,
National Labor Relations Board, Tenth Region, 528 Peachtree-Seventh Building, Atlanta, Ga.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS, LOCAL UNION 859, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, *Petitioner* v. NATIONAL LABOR RELATIONS BOARD, *Respondent*	No. 12605

ON PETITION FOR REVIEW AND ON CROSS-PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD *

Decided December 8, 1955

Mr. Herbert S. Thatcher, with whom *Mr. Drexel A. Sprecher* was on the brief, for petitioner.

Mr. Norton J. Come. Attorney, National Labor Relations Board, of the bar of the Supreme Court of Illinois, *pro hac vice,* by special leave of Court, with whom *Mr. Marcel Mallet-Prevost,* Assistant General Counsel, National Labor Relations Board, was on the brief, for respondent.

* 10-CC-79; 110 NLRB 2192.

Before PRETTYMAN, BAZELON and FAHY, Circuit Judges.

FAHY, *Circuit Judge:* On findings of fact based upon a stipulation among the appellant Union, the General Counsel of the National Labor Relations Board, and the Associated General Contractors of America, Inc., Georgia Branch, the Board entered an order against the Union requiring it to cease and desist conduct found to violate section 8(b) (4) (A) of the Taft-Hartley Act, the so-called secondary boycott provision.[1] The Union petitions us to set aside the order and the Board petitions us to enforce it.

The case involves picketing at sites shared by the struck employer and neutral employers. The pertinent findings of fact contained in the Board's decision are in substance as follows: Campbell Coal Company is engaged in the sale of building materials including ready mixed concrete. It operates two ready-mix concrete plants in Atlanta, where it employs, among others, men who drive trucks by which Campbell delivers its ready-mix to construction sites. At the delivery points the truck drivers at the direction of the

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[1] This section provides:

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * *

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. * * *" 61 Stat. 141 (1947), 29 U.S.C. § 158(b) (4) (A) (1952).

contractors on those sites operate the unloading mechanism of the truck so as to place the ready-mix at places and in receptacles designated and provided by the contractors. Frequently the unloading is accomplished by pouring the mixture into forms so placed that when dry the mixture becomes part of the structure on the project. The drivers spend approximately 25 per cent of their working time at their employer's plants, 25 per cent en route, and 50 per cent at construction sites.

The Union initiated a strike against Campbell because of the discharge of a number of the truck drivers. It picketed the two ready-mix plants. In addition the pickets followed some of the trucks from the plants to various construction projects where the trucks made deliveries, although the Union had no dispute with any of the contractors on such projects. It is this latter picketing which the Board found to be illegal. The pickets carried signs which read as follows:

> "Employees of Campbell Coal Company on strike in protest of discharges against Union employees. Sales Drivers, Helpers and Building Construction Drivers, Local 859, AFL."

The picketing continued so long as Campbell's trucks remained on the construction site and was confined to the immediate area of the trucks or as close as the pickets could get without trespassing on private property. Except for displaying the picket signs. The Union's pickets did not communicate with any employees working at the projects.

On these findings [2] the Board reached the conclusion

[2] Some additional facts are contained in the stipulation but are not the subject of findings by the Board. No contention in this court is made by the Board upon the basis of these facts, although

that section 8(b) (4) (A) was violated because the picketing was conducted "to force secondary employers located on such [construction] projects to cease doing business with Campbell, by inducing and encouraging the employees of said employers to engage in a strike * * *"

In so ruling the Board said it relied upon the "reasons stated in *Washington Coca-Cola*, 107 NLRB No. 104 [p. 299], affirmed in *Thurston Motor Lines, Inc.*, 110 NLRB No. 122 [p. 748] * * *" It considered without merit the Union's defense that its picketing of the construction projects was within the area of permissible conduct recognized by the Board in *Moore Dry Dock Company*, 92 N.L.R.B. 547. In that case the Board laid down certain conditions which a union must meet in order for its picketing to be lawful where the site picketed is shared by the primary employer and neutral employers. These conditions are that the picketing disclose clearly that the dispute is with the primary employer only, that the picketing is

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some of them are enumerated in its brief. These are that at each construction site the Union agent advised the contractor or his representative of the dispute with Campbell and asked him not to accept delivery of the concrete. If delivery was refused the Union took no further action, but if accepted the Union agents picketed the immediate area of the trucks with the signs already described. The picketing continued while Campbell's trucks remained on the construction site. In some instances employees of the contractors working on the construction projects quit work for the duration of the picketing, assigning as the reason therefor the presence of the picket signs. The Union agents did not inform employees who quit or other employees on the projects that the picketing was not intended as an appeal to them not to work, but pickets did not speak to or communicates with any employees on the projects other than by displaying the picket signs, or in any manner threaten, coerce, or intimidate the employees to quit work or offer any other form of inducement or encouragement so to do.

limited to times when the dispute situs is on the neutral employer's premises, that the primary employer is engaged in its normal business at the common situs when the picketing takes place, and that the picketing is confined to areas reasonably close to the situs of the dispute. The Union here contends that it has met these conditions but that the Board has added another and absolute prerequisite that no situs for effective picketing other than the common one be available. While in *Moore Dry Dock* it was a fact that no such separate situs was available, the Board decision did not specify this as one of the conditions for lawful picketing at a common situs. We agree with the Union that in the case at bar the Board has added this condition and has applied a rigid rule that when another such separate situs is available picketing at a common situs is prohibited. This is borne out by the findings relied upon by the Board, above set forth, by its brief in support of its decision, and by the reasoning of the decision itself. As to the latter, the *Thurston* case is expressly relied upon. There the Board held that picketing at a common situs was unlawful "when the employer has a primary place of business in the locality which can be picketed by the labor organization with which the employer has a dispute." 110 N.L.R.B. at 754. Since there was such a separate situs it was concluded that the picketing at the situs which was common to the struck employer and the secondary employer was not primarly, but was "an attempt to induce and encourage the employees of various secondary employers to engage in a strike or a concerted refusal in the course of their employment to handle or work on Thurston's goods or perform services involving Thruston's goods, an object thereof being to require such secondary employers to cease doing business with Thurston." [3] *Ibid.*

[3] Although these statements are taken from the trial exam-

In *Washington Coca-Cola, supra,* decided before *Thurston,* and now also relied upon, the Board answered a union's contention that certain picketing was protected by the *Moore Dry Dock* rule by holding the rule inapplicable whenever the struck employer has a permanent place of business at which picketing can be effectively carried on.

Finally, we consider the Board's brief. It states:

> "Accordingly, the question is not * * * whether 'the dispute reaches to the area which is being picketed,' but whether Campbell, the primary employer, had separate premises in the area which provided the Union with a fixed and adequate base for carrying on its primary activity. The record shows that, like the company in *Coca-Cola, supra,* it did have such premises. * * * In these circumstances the Board's common situs rules are inapplicable, there being no excuse, other than the impermissible one of increasing the effectiveness of the picketing, for allowing the Union to extend it to the construction projects and thereby invoke neutral employers in its dispute with Campbell."

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iner's findings of fact, they must be regarded as proper expressions of the rule upon which the Board depends in the instant case. In the first place, the Board in *Thurston* adopted these findings. And in the second place, any other conclusion would rob of meaning the Board's reliance in the instant case upon "the reasons * * * affirmed in *Thurston Motor Lines, Inc.* * * *" since the Board gave no independent expression of reasons for the *Thurston* decision. It is true that the examiner assigned an alternative reason in *Thurston,* namely, that another *Moore Dry Dock* requirement was absent inasmuch as the picketing did not clearly disclose that the dispute was with the primary employer only. But the Board could not have intended to refer to this reason as applicable to the instant case, since here the picket signs were clear and there were no attempts by those picketing to induce employees of neutral employers not to cross the picket line, as there were in *Thurston.* Moreover, the Board's brief, discussed in the text *infra,* demonstrates beyond doubt that the rule relied upon is the one above outlined.

Affirmance by this Court of the *Coca-Cola* order, *sub nom. Brewery and Beverage Drivers and Workers Local Union No. 67* v. *NLRB*, —— U.S. App. D.C. ——, 220 F. 2d 380, did not constitute approval of the rule now advanced by the Board, but must be construed only as agreement with the conclusion the Board there reached, which rested in considerable part upon additional findings. Here, in contrast, the decision rests solely upon the fact that Campbell had other places of business, not common with a neutral employer, which could be and were being picketed.[4] Yet Campbell's employees worked at these places only about 25 per cent of their time and spent 50 per cent with the trucks at places where Campbell did business coincidently with neutral employers. Section 8(b) (4) (A) does not contain a provision which condemns concerted activity of employees with respect to their own employer merely because it occurs at a place where it comes to the attention of and incidentally affects employees of another, even where the activity could be carried on a a place where the primary employer alone does business. The existence of a common site, of such incidental effect, and of another place which can be picketed, are factors to be considered in determining whether or not the section has been violated, but alone are not conclusive.[5] The presence of these factors does not war-

[4] These were not the only factors considered by the Board in its decision recently upheld in *NLRB* v. *Associated Musicians of Greater New York, Local 802*, No. 23550, 2d Cir., Nov. 3, 1955. In that case requests were made by Union representatives that the secondary employers cease doing business with the primary employers. This was true in the present case, but was not relied upon by the Board. See note 2 *supra*. There are also other factual distinctions between the two cases.

[5] In addition to *Moore Dry Dock, supra*, see *Schultz Refrigerated Service*, 87 N.L.R.B. 502; *Oil Workers International Union (The Pure Oil Co.)*, 84 N.L.R.B. 315; *NLRB* v. *Service Trade Chauffeurs,*

rant a failure to consider other facts which are relevant and perhaps countervailing. See *NLRB* v. *General Drivers, Warehousemen and Helpers, Local 968,* 225 F. 2d at 209-210. No rigid rule which would make these few factors conclusive is contained in or deducible from the statute. To read it into the statute by implication would unduly invade the application of section 13[6] which preserves the right to strike, "except as specifically provided" in other provisions of the Act. It is not specifically provided that picketing at a common site, with an incidental effect upon employees of a neutral employer, is unlawful in every case where picketing could also be conducted against the primary employer at another of its places of business.

This view has been set forth at length in *NLRB* v. *General Drivers, Warehousemen and Helpers, Local 968,* 225 F. 2d 205 (5th Cir.). There the labor dispute involved four warehouse employees who occasionally made deliveries to construction sites where the remainder of the employer's work force was engaged. Employees of neutral employers were also working at these sites, but not at the primary employer's warehouse. Nevertheless, these common sites were picketed along with the warehouse, regardless of whether any of the four employees made deliveries to the construction projects. The picket signs together with pamphlets distributed by the pickets showed that the strike was against only the primary and no other employer, and that the picket line should be considered as directed only towards those locations within the projects where primary employees were working. The court held the Board erred

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191 F. 2d 65 (2d Cir.); *NLRB* v. *Local Union No. 55,* 218 F. 2d 226 (10th Cir.).

[6] 61 Stat. 151 (1947), 29 U.S.C. § 163 (1952).

in concluding that the Union was in violation of section 8(b) (4) (A) merely upon the basis of findings that "the drivers and warehousemen involved were employed 'not at the constructtion projects but at the Otis Massey [the primary employer's] warehouse,' so that the warehouse location was the sole 'situs of the Union's dispute,' and the place where it could 'adequately publicize' its private controversy with the primary employer without disrupting work of the *other* neutral employers." *Id.* at 208. Although such a finding as to situs, arrived at in part by applying the same "adequate publicity" rule here proposed, brought the case within the *Moore Dry Dock* criterion barring picketing at a common situs which is not the situs of the dispute, the court said that the approval which had been given by the courts to the standards set forth in *Moore Dry Dock* for lawful picketing at a common site.

> "* * * was necessarily based upon substantial evidence that the unlawful objective denounced by the statute actually existed, rather than upon the inferentially suggested theory that this ultimate and controlling statutory inquiry may be effectually supplanted merely by Board findings that the real 'situs' of a labor dispute exists at a location other than that determined by the conduct of the parties, at which place alone it may be 'adequately' publicized with impunity under the Act, and thereby inferring from such findings, as here, that the unlawful objective exists. Indeed, such a theory would, we think, elevate the Board formulated 'criteria' by judicial fiat to a vantage point from which it could, in effect, circumvent the statute, for in this type instance it would substitute Board inferences as to the lawfulness or unlawfulness of an objective, based purely on its own judgment as to the propriety and adequacy of the means employed in a labor dispute, for the sole statutory test of unlawfulness of the end or objective sought, contrary to the Supreme Court's pronouncements that it is ' "the objective of the union's secondary activities * * * and

not the quality of the means employed to accomplish that objective, which was the dominant factor motivating Congress in enacting that provision." International Brotherhood of Electrical Workers Local 501, v. N.L.B.R., 341 U.S. 694, 704 * * *." 225 F. 2d at 209-210.

We agree with this analysis. In this case the Board does not even press the contention that the existence of a separate situs of the primary employer causes the *Moore Dry Dock* standards to bar picketing at a common situs. Rather it seems to assert that these standards need not be considered if effective picketing can be conducted at a situs not common. Nevertheless, this difference of approach and whatever factual differences exist between *Brewery and Beverage Drivers* and this case do not render the Fifth Circuit's reasoning any less pertinent. A violation of section 8(b) (4) (A) is not to be found by a rule of decision based upon findings which are inadequate to support the conclusion reached.

Since the decision of the Board, as shown by its findings and reasoning, turns upon the fact of concerted activity at a common situs where one not common was available, we will set aside the order, nothwithstanding the picketing had incidental effect upon employees of neutral employers, but will remand the case to the Board for its further consideration, if desired. Otherwise our decision would constitute an approval of a rigid rule which the language of the statute does not support.

It is so ordered.

116 NLRB No. 124

D-35
Atlanta, Ga.

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS LOCAL UNION 859 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO (Campbell Coal Company) and ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., GEORGIA BRANCH	Case No. 10-CC-79

SUPPLEMENTAL DECISION AND ORDER

On December 30, 1954, the Board issued a Decision and Order in this case.[1] It found that the Respondent had violated Section 8(b) (4) (A) of the Act by picketing the work places of certain secondary employers to induce or encourage employees of said employers to engage in a strike with an object thereof to force employers to cease doing business with Campbell Coal Company. To remedy the violation found the Board ordered the Respondent to cease and desist from the conduct found to be unlawful and to take certain affirmative action.

[1] 110 NLRB 2192

In its Decision the Board rejected the Respondent's contention that its picketing of work places occupied by secondary employers fell within the area of permissible conduct recognized by the Board in *Moore Dry Dock Company,* 92 NLRB 547, and *Stover Steel Service,* 108 NLRB 1575. In rejecting this contention and in finding the violation the Board applied its reasoning, as expressed in *Washington Coca-Cola Bottling Company,* 107 NLRB 299, that picketing at a common situs occupied by both the primary employer and secondary employers is unlawful where the employer, as in the instant case, has a place of business in the locality occupied by it alone which can be adequately picketed.

The case was considered by the United States Court of Appeals for the District of Columbia [2] upon the Respondent's petition for review and for the Board's cross-petition for enforcement of its Order. The Court issued its opinion on December 8, 1955, setting aside the Board's Order and remanding "the case to the Board for its further consideration, if desired." In its opinion the Court disagreed with the Board's application of the *Washington Coca Cola* rationale and stated that the "existence of a common situs, of such incidental effect, and of another place which can be picketed are factors to be considered in determining whether or not the Section [Section 8 (b) (4) (A)] has been violated, but alone are not conslusive."

The Court set aside the Order of the Board solely on the ground that the Board's decision "turns upon the fact of concerted activity at a common situs where one not common is available." This the Court believed to be a rigid rule which it would be approving were it to enforce the Board's Order. In its decision, however, the Court recog-

[2] 229 F. 2d 514, Cert. denied 351, U. S. 972.

nized that there was additional evidence in this record to support a finding that the Respondent Union had violated Section 8(b) (4) (A). Such evidence was not relied upon by the Board and was therefore not considered by the Court in the enforcement proceeding. In view of the Court's decision, the Board has carefully reconsidered the entire record in this case to determine upon all the evidence whether the picketing activities of the Respondent are in violation of the Act.

As heretofore found, the Campbell Coal Company operated two ready-mix concrete plants in the Atlanta, Georgia, area and employed truckdrivers for the purpose of transporting the ready-mix to various construction projects in that area. The truckdrivers entered and left the ready-mix plants several times during the course of each day, spending approximately 25 percent of their working time at the plants, 25 percent en route and 50 percent at the construction sites. At the construction sites the truckdrivers operate the loading mechanisms of the trucks so as to deposit the ready-mix at places and in receptables designated and provided by the contractors. A frequent method of unloading is to pour the mixture into forms so placed that the mixture, when dried, becomes a part of the structure of the project.

In June 1954 the Union called a strike against Campbell and picketed its two ready-mix plants. In addition the pickets followed Campbell's trucks to the construction projects where they made deliveries. The pickets carried signs reading:

> Employees of Campbell Coal Company on strike in protest of discharge against Union employees. Sales Drivers, Helpers & Building Construction Drivers, Local 859, AFL-CIO.

The picketing continued only so long as Campbell trucks remained at the construction projects and was confined to the immediate area of the trucks. Except by displaying the picket signs, the pickets did not communicate with any of the employees at the project. At each construction site the Respondent's agent advised the contractor or his representative of the dispute with Campbell and asked him not to accept delivery of the concrete. If delivery was refused the Respondent took no further action, but if accepted the Respondent's agents picketed the trucks as described above. Further, in some instances employees of the neutral contractors refused to work for the duration of the picketing, assigning as their reason the presence of the picket signs. The Respondent's agents made no effort to inform these employees that the picketing was not intended as an appeal to them not to work.

The Respondent contends that its picketing was limited to the employees of Campbell Coal and was not intended to induce a concerted refusal to work by employees of the neutral contractors. The Respondent's position is, in our opinion, directly refuted by the evidence set forth above. Unable to cause a cessation of business between certain neutral contractors and the primary employer by direct appeals to the former, the Respondent sought to accomplish that objective through a picket line appeal to employees of the secondary employers. Only those employers who refused to accede to the Respondent's demands that they cease doing busines with Campbell Coal were picketed. When employees of these employers ceased working as a direct result of the picketing the picket line had accomplished the Respondent's previously revealed objective of putting pressure on neutral employers to force them to cease doing business with the primary employer. No attempt was made by the Respondent to inform striking employees that the

picket line was aimed at Campbell Coal and not at the employees of neutral contractors. As the Court of Appeals for the District of Columbia indicated in its decision, evidence of this nature has been held sufficient to establish the unlawful object of picketing under Section 8 (b) (4). *N.L.R.B.* v. *Associated Musicians of Greater New York, Local 802*, 226 F. 2d 900 (C. A. 2).

A consideration of all these elements in the record, including, but not limited to, the fact that the Respondent could have effectively picketed Campbell Coal at its own business premises in the area, persuades us that the Respondent had violated Section 8 (b) (4) within the meaning of the decision of the Court of Appeals for the District of Columbia, remanding the case to the Board for further consideration, if desired.

Accordingly, upon the basis of this Supplemental Decision the National Labor Relations Board hereby respectfully requests the United States Court of Appeals for the District of Columbia to enforce the following Order.

ORDER

Upon the entire record in the case and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Inducing or encouraging employees of George A. Fuller Construction Company, Southeastern Construction Company, The Flagler Company, Inc., Barge-Thompson

Company, Ira H. Hardin Company, Wesley & Company, Inc., and Thompson and Street Company, or of any other employer to engage in a strike or concerted refusal in the course of their employment to perfom services for their employers where an object thereof is to force or require said employers to cease doing business with Campbell Coal Company.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at the business offices of Sales Drivers, Helpers & Building Construction Drivers, Local Union 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, in Atlanta, Georgia, copies of the notice attached hereto as Appendix A.[3] Copies of said notice, to be furnished by the Regional Director for the Tenth Region, after being duly signed by official representatives of the Respondent shall be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to members of Local Union 859 are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material. The Respondent shall also sign copies of the notice which the Regional Director shall submit for posting, the employers willing, at the Atlanta, Georgia, premises of the employers listed in Appendix B.

[3] In the event that this Order is enforced by a Decree of the United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(b) Notify the Regional Director for the Tenth Region, in writing within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated Sept. 7, 1956, Washington, D. C.,

BOYD LEEDOM, *Chairman*
ABE MURDOCK, *Member*
PHILIP RAY ROGERS, *Member*
STEPHEN S. BEAN, *Member*
NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX A

NOTICE

To All Members of Sales Drivers, Helpers & Building Construction Drivers, Local 859, of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL, and to all Employees of Campell Coal Company

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

WE WILL NOT induce or encourage the employees of GEORGE A. FULLER CONSTRUCTION COMPANY, SOUTHEASTERN CONSTRUCTION COMPANY, THE FLAGLER COMPANY, INC., BARGE-THOMPSON COMPANY, IRA H. HARDIN COMPANY, WESLEY & COMPANY, INC., AND THOMPSON AND STREET COMPANY, or any other employer, to engage in a strike or concerted refusal in the course of their employment to perform any services for their respective employer, where an object thereof is to force or require said Employers to cease doing business with Campbell Coal Company.

APPENDIX A

SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS, LOCAL UNION 859, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, & HELPERS OF AMERICA, AFL.

Dated ..... By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

George A. Fuller Construction Company
Southeastern Construction Company
The Flagler Company, Inc.
Barge-Thompson Company
Ira H. Hardin Company
Wesley & Company, Inc.
Thompson and Street Company

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SALES DRIVERS, HELPERS & BUILDING CONSTRUCTION DRIVERS, LOCAL UION 859, OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO (Campbell Coal Company) and ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., GEORGIA BRANCH	Case No. 10-CC-79

ORDER GRANTING MOTION

On September 7, 1956, the Board issued a Supplemental Decision and Order[1] in the above-entitled proceeding. Thereafter, on October 31, 1956, counsel for the General Counsel filed a Motion to Amend Supplemental Decision and Order by naming Truck Drivers and Helpers Local Union No. 728, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO as the Respondent in lieu of Sales Drivers, Helpers & Building Construction Drivers Local Union 859 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO. Attached to the said motion was a Stipulation of the parties agreeing to such amendment. The Board having duly considered the matter,

[1] 116 NLRB No. 124

Order Granting Motion

IT IS HEREBY ORDERED that the Motion to Amend Supplemental Decision and Order be, and it hereby is, granted.

Dated, Washington, D. C., November 15, 1956.

By direction of the Board:

FRANK M. KLEILER,
Executive Secretary.

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRUCK DRIVERS AND HELPERS, LOCAL UNION 728 (formerly Local Union 859) OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO *Petitioner,* v. NATIONAL LABOR RELATIONS BOARD, *Respondent.*	No. 13,651

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, do hereby stipulate and agree as follows with respect to the issues, the dates for the filing of the briefs and joint appendix, and the contents of the joint appendix:

I. STATEMENT OF THE ISSUE

Whether the Board properly concluded that, in the circumstances of this case, the union's picketing at various construction projects violated Section 8(b)(4)(A) of the National Labor Relations Act.

II. THE CONTENTS OF THE RECORD AND THE JOINT APPENDIX

1. The record in No. 12,605, *Sales Drivers, Helpers and Building Construction Drivers, Local Union 859* v. *N.L.R.B.*

(C.A.D.C.), shall be incorporated into and made a part of the record in the instant proceeding.

2. The portions of the record to be printed as a joint appendix shall consist of:

(a) The decision and order of the Board in *Sales Drivers, etc. and Associated General Contractors of America, Inc., Georgia Branch,* Case No. 10-CC-79, dated December 30, 1954.

(b) The stipulation in Case No. 10-CC-79 entered into about September 9, 1954, between the union, the charging party, and counsel for the General Counsel of the Board.

(c) The opinion of the Court of Appeals for the District of Columbia Circuit in No. 12,605, *Sales Drivers, Helpers and Building Construction Drivers Local Union 859* v. *N.L.R.B.*, dated December 8, 1955.

(d) The supplemental decision and order of the Board in *Sales Drivers, Helpers and Building Construction Drivers, Local Union 859, et al.*, Case No. 10-CC-79, dated September 7, 1956.

(e) Order of the Board in Case No. 10-CC-79 granting motion to amend supplemental decision and order, dated November 15, 1956.

III. Dates for filing of briefs and Joint Appendix

Petitioner's opening briet and the joint appendix shall be filed on or before March 29, 1957.

Respondent's brief shall be filed on or before April 30, 1957.

Petitioner's reply brief, if any, shall be filed on or before May 20, 1957.

Dated at Washington, D. C. this 25th day of February, 1957.

HERBERT S. THATCHER,
Counsel for Petitioner.
Counsel for Respondent

STEPHEN LEONARD,
Associate General Counsel
National Labor Relations Board

United States Court of Appeals
For the District of Columbia Circuit

JANUARY TERM, 1957.

TRUCK DRIVERS AND HELPERS LOCAL UNION 728 (FORMERLY LOCAL UNION 859) OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, *Petitioner,* v. NATIONAL LABOR RELATIONS BOARD, *Respondent.*	No. 13,651

FILED, MAR. 1, 1957

JOSEPH W. STEWART, *Clerk.*
Before: Burger, Circuit Judge.

PREHEARING ORDER

Counsel for the parties in the above-entitled case having submitted their stipulation dated February 25, 1957, and the stipulation having been considered, the stipulation of the parties is hereby approved, and it is

ORDERED that the parties proceed according to the stipulation and that this order and the stipulation dated February 25, 1957, be printed in the joint appendix.

Dated: March 1, 1957.